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Nos. 01-705 and 01-715

In the Supreme Court of the United States

JO ANNE B. BARNHART, COMMISSIONER OF SOCIAL SECURITY, PETITIONER

v.

PEABODY COAL COMPANY, ET AL.

MICHAEL H. HOLLAND, ET AL., PETITIONERS

v.

BELLAIRE CORPORATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE FEDERAL PETITIONER

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QUESTION PRESENTED

The Coal Industry Retiree Health Benefit Act of 1992 (Coal Act or Act), 26 U.S.C. 9701-9722 (1994 & Supp. V 1999), established the United Mine Workers of America Combined Benefit Fund (Combined Fund) to ensure the continued provision of health-care benefits to retired coal miners who worked under collective bargaining agreements that promised such benefits. Those benefits are financed principally through premiums paid to the Combined Fund by "signatory operators" that employed miners under those collective bargaining agreements and are assigned responsibility for their retired miners' benefits. The Act provides that the Commissioner of Social Security "shall, before October 1, 1993," assign responsibility for each eligible retired coal miner to an appropriate signatory operator that employed the miner (or to a "related person" of a signatory operator). 26 U.S.C. 9706(a). The Commissioner was unable, however, to complete all such assignments before October 1, 1993.

The question presented is whether the Commissioner's assignments of responsibility for retired miners that were made on or after October 1, 1993, are void.

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OPINIONS BELOW

The opinion of the court of appeals in *Peabody Coal* (Pet. App. 1a-2a)[1] is not published in the *Federal Reporter*, but is reprinted at 14 Fed. Appx. 393. The orders of the district court in *Peabody Coal* (Pet. App. 5a-11a) are unreported.

[1] In this brief, "Pet." refers to the government's petition for a writ of certiorari in No. 01-705, and "Pet. App." refers to the appendix to that petition.

The opinion of the court of appeals in *Bellaire* (Pet. App. 3a-4a) is also not published in the *Federal Reporter*, but is reprinted at 14 Fed. Appx. 424. The order of the district court in *Bellaire* (Pet. App. 14a-25a) is unreported.

JURISDICTION

The judgments of the court of appeals in these two cases were entered on June 21, 2001, and June 22, 2001. Pet. App. 1a, 3a. On September 12, 2001, Justice Stevens extended the time within which to file a petition for a writ of certiorari to and including October 19, 2001, and October 20, 2001. On October 10, 2001, Justice Stevens further extended the time within which to file a petition to and including November 18, 2001, and November 19, 2001. The petitions for a writ of certiorari were filed on November 19, 2001 (a Monday). The petitions were granted on January 22, 2002, and the Court consolidated the cases. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 9706(a) of Title 26, United States Code, provides:

> For purposes of this chapter, the Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:
>
> (1) First, to the signatory operator which—
>
> (A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which—

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement.

STATEMENT

1. a. Congress enacted the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act or Act), 26 U.S.C. 9701-9722 (1994 & Supp. V 1999), in response to a crisis that threatened to deprive more than 100,000 retired coal miners and their dependents of health-care benefits. Those benefits had been promised to retired coal miners in a series of collective bargaining agreements known as National Bituminous Coal Wage Agreements (NBCWAs). In the 1980s and 1990s, the financial stability of private multi-employer plans that had been established by the coal industry in the NBCWAs to finance those benefits was threatened by increasing health-care costs and the termination of

employers' contribution obligations, as coal mine operators switched to non-union employees or left the coal mining business altogether. As more companies stopped contributing to the plans, the remaining contributors were forced to shoulder more of the costs, which in turn led to even more defections and created a downward spiral. See generally *Barnhart* v. *Sigmon Coal Co.*, 122 S. Ct. 941, 947-948 (2002); *Eastern Enterprises* v. *Apfel*, 524 U.S. 498, 504-514 (1998).[2]

Congress's objectives in enacting the Coal Act were to "identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to [coal industry] retirees," to "allow for sufficient operating assets for such plans," and to "provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans." Energy Policy Act of 1992, Pub. L. No. 102-486, Tit. XIX, § 19142, 106 Stat. 3037. In furtherance of those ends, the Coal Act established a private multi-employer plan known as the United Mine Workers of America Combined Benefit Fund (Combined Fund or Fund). The Combined Fund provides health-care benefits to individuals who, at the time the Act was passed, were receiving benefits from the multi-employer plans previously established by collective bargaining in the coal industry. See 26 U.S.C. 9702, 9703(f).

The Combined Fund is financed principally by premiums paid by the "signatory operator[s]" (or "related person[s]" of those signatory operators) that formerly employed the retired miners who are

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[2] Except where otherwise indicated, all references in this brief to the *Eastern Enterprises* decision are to the plurality opinion authored by Justice O'Connor in that case.

beneficiaries of the Fund, and that remain in business. 26 U.S.C. 9704, 9706(a). The Act defines "signatory operator" as "a person which is or was a signatory to a coal wage agreement." 26 U.S.C. 9701(c)(1); see 26 U.S.C. 9701(b)(1) (identifying relevant "coal wage agreement[s]").

b. The Act vests in the Commissioner of Social Security (Commissioner) the responsibility for assigning retired miners who are eligible for benefits from the Combined Fund to signatory operators or related persons of those operators. 26 U.S.C. 9706(a). Assignments are made according to a three-tiered hierarchy:

First, the Commissioner must seek to assign a beneficiary to the signatory operator that remains "in business," signed a coal wage agreement in 1978 or later, and was the most recent signatory operator to employ the miner in the coal industry for at least two years (or to any "related person" of such a signatory operator). 26 U.S.C. 9706(a)(1). The Act specifies that "a person shall be considered to be in business if such person conducts or derives revenue from any business activity, whether or not in the coal industry." 26 U.S.C. 9701(c)(7).

Second, if an assignment of a particular beneficiary cannot be made under the first tier, the Commissioner must attempt to assign the beneficiary to the signatory operator that remains in business, signed a coal wage agreement in 1978 or later, and was the most recent signatory operator to employ the miner in the coal industry (or to any related person of such a signatory operator). 26 U.S.C. 9706(a)(2).

Third, if an assignment cannot be made under the first or second tier, the Commissioner must attempt to assign the beneficiary to the signatory operator (or related person) that remains in business and employed

the miner in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 collective bargaining agreement. 26 U.S.C. 9706(a)(3).[3]

Finally, if an assignment cannot be made under any of the three tiers, then the beneficiary is considered "unassigned." See 26 U.S.C. 9704(a)(3) and (d).

When the Commissioner assigns a Combined Fund beneficiary to a signatory operator or related person, she so notifies the assigned operator, 26 U.S.C. 9706(e)(2), which then has 30 days to request "detailed information as to the work history of the beneficiary and the basis of the assignment," 26 U.S.C. 9706(f)(1). After receiving that information, the assigned operator may request further administrative review of the assignment decision. 26 U.S.C. 9706(f)(2). If, on such administrative review, the Commissioner determines that there was no error in the assignment, she so notifies the assigned operator. 26 U.S.C. 9706(f)(3)(B). If the Commissioner determines that an assignment was incorrect, however, she rescinds the assignment. 26 U.S.C. 9706(f)(3)(A)(i). In that event, the statute provides that "the Commissioner shall review the beneficiary's record for reassignment" to another signatory (or related person) under 26 U.S.C. 9706(a). See 26 U.S.C. 9706(f)(3)(A)(ii).

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[3] In *Eastern Enterprises*, this Court struck down as unconstitutional an application of the third tier to a signatory operator that had not signed a 1974 or later coal wage agreement and was not a signatory "related person" to the signatory operator that had signed such an agreement. See *Eastern Enterprises.*, 524 U.S. at 504 (plurality opinion); *id.* at 539 (opinion of Kennedy, J., concurring in the judgment and dissenting in part). The *Eastern Enterprises* decision is not directly relevant to this case, which involves only an issue of statutory construction.

c. To ensure that health-care benefits are paid for unassigned beneficiaries, each signatory operator or related person that has been assigned a beneficiary may be assessed an additional "unassigned beneficiaries premium" to be paid to the Combined Fund. 26 U.S.C. 9704(a). That premium represents each assigned operator's *pro rata* share of the total unmet benefit costs of unassigned beneficiaries. See 26 U.S.C. 9706(d) and (f). For example, if an operator was responsible for one percent of all assigned beneficiaries, it would also be responsible for one percent of the unmet benefit costs of all unassigned beneficiaries.

The Coal Act provided two other sources of financing for the health-care benefits of unassigned beneficiaries. Assigned operators may be required to pay an unassigned-beneficiary premium only if those two other sources prove insufficient to meet the benefit costs of unassigned beneficiaries.

First, the Act directed that $210 million be transferred from the 1950 United Mine Workers of America Pension Plan, a multi-employer plan that had been established to finance retirement (but not health-care) benefits of miners who had retired before 1976. A portion of those transfers was to be applied to reduce any unassigned-beneficiary premium liability for plan years commencing on or after October 1, 1993, while those funds remained available. See 26 U.S.C. 9705(a)(1) and (3)(B).

Second, for fiscal years beginning on or after October 1, 1995, the Coal Act authorizes transfers to the Combined Fund of interest earned on the Abandoned Mine Land Reclamation Fund (AML Fund) administered by the Department of the Interior. The Act specifies that those transferred monies are to be used to reduce the

unassigned-beneficiary premium liability. 26 U.S.C. 9705(b); 30 U.S.C. 1232(h).[4]

2. The first full fiscal year of Combined Fund operations (termed a "plan year" under the Act) was scheduled to begin on October 1, 1993. See 26 U.S.C. 9702(c).[5] Congress accordingly directed that premium payments to the Combined Fund were to commence during the plan year beginning on that date. See 26 U.S.C. 9704(g)(1). In accordance with that time frame, the Coal Act provides that "the Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator." 26 U.S.C. 9706(a).

For several reasons, however, the Commissioner was unable to complete the assignments of all beneficiaries before October 1, 1993. First, the Coal Act itself did not authorize or appropriate any funds to carry out the assignment process, and the Social Security Administration (SSA) determined that it was not legally authorized to use Social Security trust funds for that purpose.[6] Congress eventually provided SSA with

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[4] The AML Fund was established by the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, for the purpose of reclaiming and restoring land and water resources adversely affected by past coal mining. See 30 U.S.C. 1231(c). The AML Fund is financed by fees assessed on coal operators for each ton of coal produced. See 30 U.S.C. 1232(a).

[5] The Combined Fund actually commenced operations on February 1, 1993. See 26 U.S.C. 9702(a)(2), 9703(b)(4). Before October 1, 1993, benefits provided by the Combined Fund were financed through other means, including interim contributions from signatories to the 1988 national coal wage agreement and a $70 million transfer from a pension fund. See 26 U.S.C. 9704(i)(1)(A), 9705(a).

[6] See *Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for 1994:*

budgetary authority for its Coal Act functions in a supplemental appropriation act, which appropriated $10,000,000, "to remain available until expended," to enable SSA to make initial assignments, review assignments on requests for reconsideration, and calculate the initial health-benefit premium. That supplemental appropriations act, however, was not enacted until July 2, 1993, only three months before the date (October 1, 1993) on which the Combined Fund's operations were first financed through premiums from signatory operators. See Supplemental Appropriations Act of 1993, Pub. L. No. 103-50, Ch. V, 107 Stat. 254.[7]

Second, the assignment task proved to be enormously complicated and time-consuming. The Commissioner was responsible for assigning approximately 80,000 retired miners who were receiving benefits under the predecessor multi-employer benefit plans. Members of the Bituminous Coal Operators Association provided the agency with a list of coal operators who voluntarily acknowledged responsibility for approximately 15,000 of those retired miners. Although the Coal Act also required the Combined Fund to provide

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Hearings Before a Subcomm. of the House Comm. on Appropriations, 103d Cong., 1st Sess., Pt. 2, at 125-126, 158-159 (1993) (*House Appropriation Hearings*).

[7] See also *Coal Industry Retiree Health Benefit Act of 1992: Hearing Before the Subcomm. On Oversight of the House Ways and Means Comm.*, 104th Cong., 1st Sess. 25 (1995) (statement of Deputy Commissioner Lawrence H. Thompson) (*1995 House Hearing*); Staff of House Comm. on Ways and Means, 103d Cong., 1st Sess., *Financing UMWA Coal Miner "Orphan Retiree" Health Benefits* 64-65 (Comm. Print 1993) (*Financing Orphan Benefits*); *Provisions Relating to the Health Benefits of Retired Coal Miners: Hearing Before the House Ways and Means Comm.*, 103d Cong., 1st Sess. 23 (1993) (statement of Acting Commissioner Lawrence H. Thompson) (*1993 House Coal Act Hearing*).

the Commissioner with the names and social security numbers of the retired miners who would be its beneficiaries (see 26 U.S.C. 9704(h)), those records were inadequate for completion of the assignment task. Thus, SSA was required to undertake a case-by-case evaluation of earnings records and employment history for some 65,000 individuals. Most of the social security employment records for those individuals were not computerized and had to be searched manually. In many cases, those records did not contain sufficient information to allow SSA to identify the signatory operator that was the miner's employer, or to determine whether any particular "related person" could be assigned responsibility for a miner if the original operator was defunct. The agency reviewed records of thousands of corporate transactions obtained from far-flung and disparate sources to determine whether retired miners could be assigned to related persons of signatory operators.[8]

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[8] See J.A. 180-182; *1995 House Hearing* 24-25, 28-29 (statement of Deputy Commissioner Thompson); *1993 House Coal Act Hearing* 24 (statement of Acting Commissioner Thompson); *Financing Orphan Benefits* 64-65.

We have been informed by SSA that it completed all but about 10,000 of the initial assignments before October 1, 1993. The agency continued to make a further 2412 initial assignments between October 1, 1993, and February 24, 1994. (The record contains a figure of 2264 such initial assignments made in late 1993 and early 1994, see J.A. 182; the agency has since determined that 148 additional miners were assigned in that time.) Of those 2412 assignments, all but 15 were made in the month of October 1993; the remaining 15 were made in February 1994. About 7250 additional assignments were made at later stages, after the agency received more information about the identities of miners' employers and the employers' related persons.

Finally, operators requested administrative review of SSA's assignments in thousands of cases. As of 1998, SSA had reviewed assignments to 665 coal operators concerning 36,256 miners, out of the 80,000 retired miners who were beneficiaries of the Combined Fund. In a number of instances during that process of administrative review, SSA learned for the first time the proper identities of employers (or related persons) that had a higher priority under the assignment criteria then the operators to which the miners had been initially assigned, and that therefore should have been assigned the miners. Some of those newly identified operators (or related persons) had also employed miners who had previously been deemed unassigned because SSA was originally unable to identify any employer or related person still in business. That new information enabled SSA to assign previously unassigned miners to the newly discovered operators and related persons.[9]

3. Several signatory operators that received initial assignments of miners on or after October 1, 1993, raised judicial challenges to those assignments. They contended that the Commissioner had no authority to make any such assignments on or after October 1, 1993. In *Dixie Fuel Co.* v. *Commissioner of Social Security*, 171 F.3d 1052 (1999) (Pet. App. 27a-50a), the United States Court of Appeals for the Sixth Circuit agreed with those contentions. In these two consolidated cases now before this Court, the Sixth Circuit in turn relied

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[9] See J.A.183; *Agency Management of the Implementation of the Coal Act, 1998: Hearing Before the Subcomm. on Oversight of Government, Management, Restructuring, and the District of Columbia of the Senate Governmental Affairs Comm.*, 105th Cong., 2d Sess. 60-61 (1998) (*1998 Senate Hearing*).

on its decision in *Dixie Fuel* to invalidate the assignments made to respondents on or after October 1, 1993. See Pet. App. 1a-4a.

In concluding in *Dixie Fuel* that the Commissioner had no authority to make assignments on or after October 1, 1993, the Sixth Circuit found it particularly significant that the Coal Act provided that the Commissioner "shall" make the assignments before October 1, 1993. The court stressed that "'shall' is explicitly mandatory language." 171 F.3d at 1061 (Pet. App. 43a) (internal quotation marks omitted).

The court acknowledged that Congress's use of the word "shall" to impose a duty on a government official to act by a certain date, "standing alone," is ordinarily insufficient to terminate the power of the government official to act beyond that date. See *Dixie Fuel*, 171 F.3d at 1062 (Pet. App. 44a). Nevertheless, it read the Coal Act's provisions governing the computation of unassigned-beneficiary premiums to rest on the premise that all assignments of beneficiaries must have been made before October 1, 1993. In particular, the court emphasized that each signatory operator's *pro rata* unassigned-beneficiary premium is determined by dividing the total number of beneficiaries assigned to that operator by the total number of beneficiaries assigned to all operators, "determined on the basis of assignments as of October 1, 1993." 26 U.S.C. 9704(f)(2); see *Dixie Fuel*, 171 F.3d at 1062 (Pet. App. 45a-47a). The court recognized that the Coal Act expressly provides that the quotient may be adjusted for subsequent plan years, to reflect possible changes in assignments after October 1, 1993—if, for example, operators successfully challenge assignments as having been made to the wrong signatory operator or related person. See 26 U.S.C. 9704(f)(1). But, the court rea-

soned, "those adjustments are all premised on the assignments' having been completed before October 1, 1993." 171 F.3d at 1063 (Pet. App. 47a).

4. In the two decisions at issue in this case, the Sixth Circuit invalidated assignments made by the Commissioner after October 1, 1993, on the authority of its decision in *Dixie Fuel*. Pet. App. 1a-2a, 3a-4a. In each case, respondents alleged that the Commissioner improperly assigned them responsibility for Combined Fund beneficiaries on or after October 1, 1993. In each case, the district court granted respondents summary judgment on that claim based on the Sixth Circuit's decision in *Dixie Fuel*. *Id.* at 7a-8a, 14a-25a.[10]

The Commissioner appealed in each case, and also petitioned for initial hearing en banc for the purpose of seeking reconsideration of *Dixie Fuel*. The court of appeals denied those petitions. Pet. App. 26a. The court then issued brief *per curiam* opinions affirming the district court's judgment in each case, explaining that the panel was bound to follow the circuit precedent in *Dixie Fuel*. *Id.* at 1a-2a, 3a-4a.

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[10] The *Peabody* respondents' complaint set forth additional counts challenging the assignments on other grounds, but those other claims were all dismissed pursuant to a stipulation and by a separate order of the court. See Pet. App. 9a-13a. After all the claims raised in the complaint were resolved, the district court entered final judgment for the *Peabody* respondents pursuant to Federal Rule of Civil Procedure 58. *Id.* at 5a.

In *Bellaire*, the respondents also raised other challenges to the Commissioner's assignments, but after the district court ruled in respondents' favor on the *Dixie Fuel* claim, it directed entry of final judgment on that claim under Federal Rule of Civil Procedure 54(b). Pet. App. 12a-13a, 22a-24a. The district court also ordered injunctive relief in favor of the *Bellaire* respondents. *Id.* at 21a-22a.

SUMMARY OF ARGUMENT

The court of appeals erred in holding that Congress terminated the Commissioner's authority to assign Combined Fund beneficiaries to responsible signatory operators or related persons on October 1, 1993. This Court's precedents make clear that a statutory provision directing an agency to accomplish a task by a specified date is not, standing alone, to be construed to terminate the agency's power to continue implementing the statute after that date. Congress must instead clearly and unequivocally extinguish the agency's authority as a consequence for untimely action.

The Coal Act contains no such expression of congressional intent. The Act contains no provision that expressly terminates the Commissioner's power to make assignments to financially responsible entities under the statutory assignment criteria as of October 1, 1993, or expressly makes void any assignments made after that date. The court of appeals' conclusion that the Commissioner's authority expired on that date, moreover, is contrary to several of Congress's central purposes in enacting the Coal Act—to ensure that Combined Fund beneficiaries' health-care costs would be paid, to the extent possible, by the companies that employed them (or a related person to such a company), and to maintain the Combined Fund as a self-sufficient, privately-financed plan. The court of appeals' construction shifts the costs of financing retired miners' health-care benefits to the public fisc and, potentially, to other signatory operators that never employed the miners, even when the company that employed those retired miners remains in existence and is solvent.

Moreover, when an assignment of a beneficiary to a particular operator is overturned on administrative

review, the Coal Act expressly requires that that beneficiary be reassigned to another signatory operator or related person if possible, and that the operators' premiums be recalculated accordingly. In such circumstances, premiums are also recalculated for all operators back to October 1, 1993. There is no sound basis for permitting such reassignments and recalculations in that context, yet prohibiting reassignment and recalculation in the context of a determination that a beneficiary, mistakenly deemed unassigned at one point, should in fact have been assigned to an existing and solvent signatory operator.

Congress's subsequent enactment of a supplemental appropriation to allow the Commissioner to undertake her responsibilities under the Coal Act further supports the Commissioner's exercise of assignment authority after October 1, 1993. Congress knew, when it enacted that supplemental appropriation less than three months before October 1, 1993, that the agency had not even begun the process of making assignments (because the agency determined it had no statutory authorization to spend money to do so), and that the agency did not anticipate that the task could be completed by October 1, 1993. Congress nonetheless gave the agency authority to spend money to complete the task beyond that date. Congress would not have done so had it understood the Coal Act to terminate the Commissioner's authority to make assignments as of October 1, 1993.

To the extent the question remains in doubt after a review of the text, structure, and purposes of the Coal Act, the Court should defer to the Commissioner's determination that she had authority to complete the assignments after October 1, 1993. That determination is not contradicted by anything in the Act, it is con-

sistent with this Court's dictates admonishing against reading statutes as terminating agency authority based on expiration of time periods, and it is reasonable in light of the complex task facing the Commissioner when Congress provided her with the necessary funds.

ARGUMENT

THE COAL ACT DOES NOT EXTINGUISH THE COMMISSIONER OF SOCIAL SECURITY'S AUTHORITY TO MAKE BENEFICIARY ASSIGNMENTS AS OF OCTOBER 1, 1993

The decisions below, holding that the Commissioner of Social Security had no power to make any initial assignments of retired miners to signatory operators on or after October 1, 1993, fundamentally misconstrue the scope of the Commissioner's statutory authority to assign responsibility for Coal Act beneficiaries to the private parties that Congress deemed most responsible for their health-care benefits. Those decisions rest on the erroneous conclusion that Congress intended to divest the Commissioner of authority to apply the detailed assignment scheme set forth in the Coal Act just three months after Congress appropriated the funds necessary to permit the Commissioner to begin the complex and time-consuming process of assigning tens of thousands of beneficiaries. Moreover, they attribute to Congress an intent to extinguish the Commissioner's assignment power after an arbitrarily established date, even when the Commissioner is subsequently able to identify a responsible coal operator or related person meeting the statutory assignment criteria, and even when crucial assignment information was not and could not have been reasonably uncovered before the arbitrarily established date.

The proper understanding of the Commissioner's assignment authority is set forth in the Fourth Circuit's decision in *Holland* v. *Pardee Coal Co.*, 269 F.3d 424 (2001), petition for cert. pending, No. 01-1366. In that case, the Fourth Circuit explained that, under this Court's precedents, statutory provisions that direct an agency to take action before a specific time are generally not construed to remove the agency's authority to carry out the statutory objectives thereafter. *Id.* at 431. The Fourth Circuit also noted that the Coal Act is devoid of any indication that Congress intended to divest the Commissioner of authority to make assignments as of October 1, 1993, merely because the Commissioner was unable to accomplish the task by that date. *Id.* at 433. The Fourth Circuit therefore correctly concluded:

> [T]o construe § 9706(a) as jurisdictional[] * * * would do violence to Congress's goal of ensuring that funding obligations be allocated to specific coal operators according to their actual, individual liability. Such a result also frustrates congressional intent by shifting financial obligations properly borne by private parties to the public fisc.

Id. at 432.

As shown more fully below, the text, structure, and purposes of the Coal Act all demonstrate that the Fourth Circuit's reading of the Coal Act best effectuates Congress's intent, and that the Sixth Circuit's decisions under review here are incorrect and should be reversed.

A. The Text, Structure, And Purposes Of The Coal Act Show That The Commissioner Retained Authority To Make Initial Assignments Of Combined Fund Beneficiaries On Or After October 1, 1993

1. A Statutory Directive That An Agency Take Action By A Particular Date Is Ordinarily Not Read To Bar The Agency From Acting After That Date

This Court long ago made clear that "many statutory requisitions intended for the guide of officers in the conduct of business devolved upon them[] * * * do not limit their power or render its exercise in disregard of the requisitions ineffectual." *French* v. *Edwards*, 80 U.S. (13 Wall.) 506, 511 (1871). With specific regard to statutory provisions directing federal agencies to take action by or within a particular time, the Court has stressed that it is "most reluctant to conclude that every failure of an agency to observe a procedural requirement voids subsequent agency action, especially when important public rights are at stake." *Brock* v. *Pierce County*, 476 U.S. 253, 260 (1986). The Court has thus admonished that, "if a statute does not specify a consequence for [agency] noncompliance with statutory timing provisions, the federal courts will not in the ordinary course impose their own coercive sanction." *United States* v. *James Daniel Good Real Property*, 510 U.S. 43, 63 (1993); see also *United States* v. *Montalvo-Murillo*, 495 U.S. 711, 717-718 (1990); *Regions Hosp.* v. *Shalala*, 522 U.S. 448, 459 n.3 (1998).

Congress may desire prompt administrative action, and it may, as it did in the Coal Act, direct the agency to undertake tasks by a particular date. But even when Congress has in that way manifested its intent that timely administrative action is important, it does not

follow that the passing of the date by which Congress expected agency action to occur terminates the agency's power to implement the congressional design. Such a sanction for untimely administrative action, by depriving the agency of power to act, can thwart rather than advance Congress's objectives. This Court has therefore held that the mere fact that Congress has directed an agency to take action by a certain date ordinarily does *not* indicate a legislative intent to preclude the agency from acting thereafter. Rather, the statute must contain a clear and specific indication that Congress intended to deprive the agency of authority to act after a deadline has passed. See *James Daniel Good*, 510 U.S. at 63 (government's failure to adhere to statutory time requirements on administrative processing of a forfeiture case does not divest it of power to prosecute forfeiture action); *Montalvo-Murillo*, 495 U.S. at 718-719 (government's failure to comply with statutory requirement for immediate hearing on necessity of pretrial detention does not bar pretrial detention of a person who should otherwise be detained); *Brock* v. *Pierce County*, 476 U.S. 253, 260 (1986) (government's failure to meet statutory deadline on investigation of a complaint does not divest it of power to take enforcement action with respect to matters raised in the complaint).

2. Nothing In The Coal Act Suggests That Congress Intended To Bar The Commissioner From Making Assignments On Or After October 1, 1993

Nothing in the text, structure, or purposes of the Coal Act suggests that Congress terminated the Commissioner's assignment authority on October 1, 1993.

a. The statutory text is devoid of any provision expressly divesting the Commissioner of assignment power on or after October 1, 1993. Congress could have expressly provided that, if assignments were not completed by October 1, 1993, the Commissioner would have no further authority to assign a Coal Act beneficiary to a signatory operator or related person, and that any untimely assignments would be deemed invalid. Congress has, in fact, specifically provided in various statutes that an agency's authority to act terminates upon expiration of a certain period.[11] The Coal Act, however, contains no such provision. That omission is itself highly significant, for Congress enacted the Coal Act against the background of this Court's precedents, including *Pierce County* and *Montalvo-Murillo*, making clear that a statutory requirement that an agency take action by or within a certain time does not, by itself, divest the agency of authority or jurisdiction to act outside that time. Congress is presumed to have been aware that, under those decisions, a statutory provision that an agency "shall" take action by a certain date will not, without

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[11] See, *e.g.*, 25 U.S.C. 2710(d)(8)(C) (proposed state-tribal compact must be deemed approved if Secretary of the Interior fails to disapprove compact within 45 days); 25 U.S.C. 2710(e) (proposed tribal gaming ordinance must be deemed approved if Secretary of the Interior fails to disapprove ordinance within 90 days); 42 U.S.C. 1396n(h) (1994 & Supp. V 1999) (application for waiver of Medicaid requirements must be deemed approved if Secretary of Health and Human Services does not issue a decision within 90 days); 49 U.S.C. 15901(c) (Supp. V 1999) (Surface Transportation Board investigative proceeding automatically dismissed if not completed within three years); see also 18 U.S.C. 3162(a)(1) and (2) (Speedy Trial Act of 1974, providing that if indictment is not filed or defendant is not brought to trial within specified periods, the charge or indictment "shall be dismissed").

more, be construed to terminate the agency's authority after that date. See *United States* v. *Wells*, 519 U.S. 482, 495 (1997).

Nor does the text of the Coal Act manifest any congressional intent to impose a "consequence" (*James Daniel Good*, 510 U.S. at 43, 63) on the Commissioner if she failed to make assignments by October 1, 1993. Indeed, visiting a consequence on the Commissioner in the context of the Coal Act would make little sense. Unlike other cases (such as *Pierce County*, *Montalvo-Murillo*, and *James Daniel Good*), where it was argued (unsuccessfully) that Congress wanted the agency to lose the authority to enforce a statutory provision as a sanction for missing deadlines, no meaningful sanction could be imposed on the Commissioner, who does not "enforce" the Coal Act against other parties. The Commissioner does not pay for the health-care benefits for beneficiaries under the Act; that is the function of the Combined Fund, which is a private entity not under the Commissioner's control. See 26 U.S.C. 9702(a)(1), 9703(b)(1). Similarly, the Combined Fund, not the Commissioner, pursues collection actions against assigned operators that do not pay their premiums. The agency's functions are limited to assigning beneficiaries to operators, reexamining those assignments on administrative review, and calculating the per-beneficiary premium that those operators must pay to the Combined Fund. See 26 U.S.C. 9704, 9706. Those assignments thus take place under a statutory framework that is designed to establish relationships among *private* parties to provide for the funding of health-care benefits.

Extinguishing the Commissioner's power to make assignments after October 1, 1993, would therefore visit adverse consequences, not on the agency responsible

for making the assignments, but on other parties that have no control over the timing of the Commissioner's assignment process. Under the Sixth Circuit's reading of the Coal Act, retired miners who were initially assigned to a signatory operator after October 1, 1993, would likely be deemed "unassigned." To finance their benefits, the Combined Fund would then have to look to transfers of interest from the Department of the Interior's AML Fund or, if such funds were not available, to a further *pro rata* contribution from all coal operators that had been assigned beneficiaries. See pp. 6-8, *supra*. No precedent of which we are aware supports visiting the consequences of an agency's failure to meet a time requirement onto other, innocent entities in such a fashion.

b. Construing the Coal Act to terminate the Commissioner's assignment power as of October 1, 1993, also would frustrate Congress's objective, set forth in the text of the Coal Act itself, of ensuring that the costs of providing health-care benefits are, to the extent possible, borne by the persons Congress deemed "most responsible for plan liabilities." Energy Policy Act of 1992, Pub. L. No. 102-486, § 19142(a)(2), 106 Stat. 3037. In establishing the three-tier assignment structure in Section 9706(a), Congress manifested its intent that miners should be deemed unassigned only as a last resort, when no employer (or related person) falling within the statutory criteria could be identified. As one of the chief sponsors of the Coal Act explained, the "overriding purpose" of the Act's assignment provisions was "to find and designate a specific obligor for as many

beneficiaries in the Plans as possible." 138 Cong. Rec. 34,002 (1992) (explanation by Sen. Wallop).[12]

The Sixth Circuit's reading of the Coal Act frustrates that central congressional objective. The Combined Fund is required by the Act to use all available plan resources to ensure, to the maximum extent feasible, that health benefits are substantially the same as those provided under the predecessor UMWA benefit trusts. See 26 U.S.C. 9703(b). Under the Sixth Circuit's decision, however, even a beneficiary whose former employer is demonstrably in business and solvent—and might well be paying for the health-care costs of other beneficiaries, if the Commissioner had identified that employer as the appropriate responsible person for

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[12] In *Sigmon*, the Court rejected the government's submission that another aspect of Senator Wallop's statement demonstrated that a direct successor in interest of a signatory operator could be assigned responsibility for the health-care costs of the operator's retired employees, if the operator itself was no longer in business. See 122 S. Ct. at 953 n.13. The Court did not suggest, however, that Senator Wallop's statement was not probative of the proper interpretation of the Coal Act; rather, it concluded that his statement was consistent with the statutory text, which the Court read to preclude the government's proposed construction. See *ibid.* In this case, there is no clear statutory language to the effect that the Commissioner's authority to make assignments *terminated* as of October 1, 1993. At most, the text of the statute indicates that Congress, by using the word "shall," intended that the tasks be completed by that date. But as we explain in the text, the word "shall," by itself, does not indicate a congressional purpose to divest an agency of authority to act after the date referred to in the statute. See pp. 20-21, *supra*; see also *Pardee*, 269 F.3d at 433 ("The Coal Act, in short, is entirely devoid of any provision that expressly divests the SSA of its authority to make adjustments or additions to the assigned and unassigned beneficiary pools in light of changed circumstances or newly obtained information.").

those other beneficiaries before October 1, 1993—would remain in the unassigned-beneficiary pool. The cost of that beneficiary's health-care benefits would then be paid in the first instance from public monies transferred from an account administered by the Department of the Interior principally designated for other important programmatic purposes—namely, the amelioration of the serious adverse consequences of surface mining. See 26 U.S.C. 9705(b); 30 U.S.C. 1232(h).[13] If those transfers proved inadequate, the beneficiary's health-care costs would fall on other private parties with no employment connection to the beneficiary, through the imposition of an unassigned-beneficiary premium. 26 U.S.C. 9704(d). Consequently, rather than promote a privately funded program that places funding burdens on the private parties that Congress deemed most responsible, the Sixth Circuit's ruling would shift costs to the public and to industry participants with no connection to the beneficiaries in question.[14]

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[13] See *Pardee*, 269 F.3d at 438 (noting that funds transferred from the AML Fund "represent funds diverted from the important public purpose of reclamation projects to rectify the serious threats posed to public health and safety by abandoned coal mines," and that "Congress could not and did not intend the AML Fund interest to be unnecessarily depleted on account of simple administrative delay by the SSA").

[14] Those costs, moreover, could be substantial. The General Accounting Office has estimated that nationwide invalidation of initial assignments made on or after October 1, 1993, could require the Combined Fund to make net refunds of $57 million in premium revenues collected for prior fiscal years. See General Accounting Office, *Analysis of the Administration's Proposal to Ensure Solvency of the United Mine Workers of America Combined Benefit Fund* 7 (Aug. 15, 2000) (lodged with the Clerk). In addition, the government estimates that the Combined Fund could lose

Congress expressly intended the Combined Fund to operate as a "privately financed self-sufficient program." Energy Policy Act of 1992, Pub. L. No. 102-486, § 19142(b)(3), 106 Stat. 3037. In establishing the Combined Fund, Congress rejected proposals that the government undertake the burden of financing retired miners' benefits. Rather, Congress made transfers of interest from the AML Fund available only as a back-up to ensure that "orphan" retirees whose employers (and all related persons) had gone out of business would not be deprived of their benefits. The assignments at issue in these cases, however, do not involve such "orphan" retirees. Rather, they involve miners who worked *for respondents* (or their related companies). By allowing respondents to shift responsibility for their retirees to the government, the Sixth Circuit's decisions contravene the "pay for your own" principle on which the Coal Act's assignment priority is based and undermines Congress's intent that the Combined Fund be financed, to the extent possible, from private sources. See *Pardee*, 269 F.3d at 437.[15]

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more than $10 million annually in revenue from assigned-beneficiary premiums in future fiscal years. See Pet. 25-26 & nn. 18-19.

[15] The *Peabody* respondents have argued (Br. in Opp. 7) that the fact that a particular beneficiary might be allocated to the wrong signatory, or incorrectly deemed unassigned, is of little significance, because Congress's "primary objective" in the Coal Act was only to ensure "the continued provision of health benefits to retired mine workers," and retired miners will continue to receive benefits even if those benefits are paid for by the wrong party. Congress well understood, however, that a principal reason for the collapse of the predecessor health-care trusts was that operators resented paying for the entire cost of the health-care benefits of retired miners who had never worked for them, or for any entity related to them. Faced with such costs, operators continued to withdraw from the NBCWA system, and the downward spiral of

c. The imposition of a short, inflexible jurisdictional deadline for assignment determinations would be particularly inconsistent with Congress's decision to include, within the ambit of parties potentially responsible for Combined Fund beneficiaries' health-care costs, not only the company that actually employed a retired miner, but also a broad range of entities that were "related" to a signatory of the pertinent collective bargaining agreement. The Coal Act provides that, if the signatory operator that employed a retired miner is no longer in business, a beneficiary may be assigned to a "related person," including, but not limited to, a member of a controlled group of corporations including the original signatory, a trade or business under common control with the signatory, or any successor in interest of one of those related persons. See 26 U.S.C. 9701(c)(2), 9706(a); see generally *Sigmon*, 122 S. Ct. at 948, 950-951.

That provision for "related person" responsibility made it necessary for the Commissioner in some cases to trace winding connections and chains of transition in business ownership and control to identify a responsible related party. For example, if the original signatory was defunct by the time the assignments were made, the Commissioner would have had to determine whether any other company had shared 50% common ownership with the signatory. That affiliate company might have subsequently been involved in a series of mergers with other companies over a period of several years. The Act nonetheless contemplates that the last

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that system accelerated. See *Sigmon*, 122 S. Ct. at 947. Congress established the assignment criteria in the Coal Act precisely to avoid a recurrence of that problem.

entity in the chain should be deemed a "related person" and assigned responsibility for beneficiary premiums.

The application of a fixed and short jurisdictional limit on making such complex determinations is manifestly impracticable and would frustrate Congress's intent to impose financial responsibility on a broad range of "related parties" in instances in which the original signatory company could no longer be found. Information on corporate affiliations, mergers, and other changes in corporate ownership and control is not available from any one, central repository. It must instead be pieced together, on a case-by-case basis, from information gleaned from the Combined Fund, other signatory operators, state corporation records, and retired miners. It is highly unlikely that Congress would have imposed an inflexible deadline on determinations that must, in a significant number of cases, be made on the basis of information that was not within the Commissioner's control and that could not be quickly and easily obtained from other sources. See *Regions Hosp.*, 522 U.S. at 459 n.3 (missing a statutory deadline is "a not uncommon occurrence when heavy loads are thrust on administrators, [and] does not mean that [the] official lacked power to act beyond it").

It is no answer to assert, as respondents do (see Peabody Br. in Opp. 10), that the Coal Act does not require a perfect match between each retired coal miner and the signatory operator that actually employed that miner. Congress did recognize that the signatory operator that had employed the miner might no longer be in existence or might not have sufficient assets to pay for the miner's benefits. Congress made provision in such cases for the Commissioner and the Combined Fund to look to the signatory operator's "related persons." See 26 U.S.C. 9701(c)(2)(A), 9704(a).

But Congress did not intend that a signatory operator that had actually employed a beneficiary of the Combined Fund and was still in business and solvent should be able to force responsibility for its own employees onto other, unrelated operators or the AML Fund. To the contrary, that is exactly the kind of maneuver that precipitated the crisis in the predecessor health-care trusts for coal industry retirees, and that led Congress to enact the Coal Act.[16]

d. Other Coal Act provisions addressing the Commissioner's assignment power confirm that Congress intended the Commissioner to have continuing authority to make and modify initial assignment determinations in light of changed circumstances or newly uncovered information. In particular, the Coal Act provides that coal companies may seek administrative reconsideration of an initial beneficiary assignment. 26 U.S.C. 9706(f). Under that provision, if the Commissioner concludes that an initial assignment was made in error, she "shall notify the assigned operator and the trustees of the Combined Fund" (who shall reduce the premiums of that operator), see 26 U.S.C. 9706(f)(3)(A)(i), and "shall review the beneficiary's record for reassignment under subsection (a)" of Section 9706, see 26 U.S.C. 9706(f)(3)(A)(ii). That reassignment may occur, of course, after October 1, 1993. Thus, Section 9706(f)(3) makes clear that in at least some circumstances, the Commissioner may make a new assign-

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[16] See *Pardee*, 269 F.3d at 437 ("It is apparent that a central objective of the Act is to assign retired coal miners and their dependents to their respective employers whenever such a match is possible, and to allocate liability accordingly. This legislative objective corresponds closely to the Act's genesis and policy underpinnings—and, crucially, to its funding scheme.").

ment of a beneficiary without regard to the putatively absolute deadline in Section 9706(a).

Respondents may argue that Section 9706(f)(3) is intended merely to carve out an exception to what they would assert is an otherwise absolute assignment deadline for instances in which an initial assignment is overturned on administrative appeal. The Act, however, is not drafted in a way that suggests the authority to make new assignments after an appeal is an "exception" to a general rule that assignments would otherwise be barred on or after October 1, 1993. To the contrary, Section 9706(f)(3)(A)(ii) states that, if the Commissioner determines on review that an assignment was in error, she "shall review the beneficiary's record for reassignment *under subsection (a)*," 26 U.S.C. 9706(f)(3)(A)(ii) (emphasis added), the provision of the Act that governs the assignment of beneficiaries "[i]n general," 26 U.S.C. 9706(a) (heading). That wording indicates that the Commissioner, in making a reassignment, would be invoking a power that is conferred by 26 U.S.C. 9706(a) itself to assign an eligible beneficiary on or after October 1, 1993—as before that date—when necessary to ensure that the assignment is made to the most responsible entity under the statutory scheme.

Furthermore, as the Fourth Circuit explained, if Congress had intended that the reassignment directive in Section 9706(f)(3)(A)(ii) to be a narrow exception to an otherwise absolute jurisdictional bar, it could have demonstrated such an intent by using any of several well-known and frequently employed conventions of statutory drafting. See *Pardee*, 269 F.3d at 435 n.14. Congress could, for example, have directed that the Commissioner must make all assignments by October 1, 1993, "except as provided" in the appeal provisions of 26

U.S.C. 9706(f). See, *e.g.*, *Acosta* v. *Louisiana Dep't of Health & Human Res.*, 478 U.S. 251, 254 (1986). Or, Congress could have provided that the Commissioner may make new assignments after an administrative appeal, "notwithstanding" the deadline set forth in 26 U.S.C. 9706(a). See, *e.g.*, *Cisneros* v. *Alpine Ridge Group*, 508 U.S. 10, 13 (1993). The text of the Coal Act, however, contains nothing to suggest that the reassignment power contemplated by Section 9706(f)(3) is an "exception" to an otherwise fixed jurisdictional deadline. To the contrary, the absence of any language purporting to reconcile the remedial powers set forth in the administrative appeal provisions of Section 9706(f)(3) with the putatively absolute "deadline" in Section 9706(a) indicates that Congress did not intend to impose a fixed jurisdictional deadline on assignments in the first instance, and so there was no conflict to reconcile.

Construing the remedial powers conferred by Section 9706(f)(3) as a narrow "exception" to an otherwise absolute deadline also would create strange and unsound distinctions in the Commissioner's power to reexamine initial administrative determinations. If an administrative appeal revealed that an initial assignment of a beneficiary to an entity was based on an error of fact or a misreading of the Act, the Commissioner would have authority under Section 9706(f)(3) to reassign that beneficiary to another entity, if such an entity falling within the statutory criteria could be identified. But under the Sixth Circuit's approach, the Commissioner would be powerless to make a proper assignment of a beneficiary who previously had been deemed unassigned, even if crucial information such as the signatory status of the beneficiary's employer or the identity of businesses related to the signatory was

not reasonably available to the Commissioner until after October 1, 1993. Such distinctions in the Commissioner's power to reconsider initial decisions in light of new information would serve no discernible purpose and should not be attributed to Congress absent a clear statutory command.

B. The Sixth Circuit's Reading Of The Coal Act's Provisions Governing The Calculation Of Unassigned-Beneficiary Premiums As Limiting The Commissioner's Assignment Authority Is Erroneous

Despite the clear import of the statutory text and purposes, the Sixth Circuit concluded in *Dixie Fuel* that Congress intended to extinguish the Commissioner's authority to make assignment determinations as of October 1, 1993. The Sixth Circuit reasoned principally that the Coal Act's provision governing the computation of assigned operators' *unassigned* beneficiary premiums is premised on a requirement that all assignment determinations must be made by October 1, 1993. Relying in particular on 26 U.S.C. 9704(f)(1), the Sixth Circuit concluded that "the calculation of the obligation of every assigned operator for payment of unassigned beneficiary premiums is dependent upon the completion of the assignment of beneficiaries by October 1, 1993." *Dixie Fuel*, 171 F.3d at 1063 (Pet. App. 47a.)

That reasoning is flawed in several respects. First, Section 9704(f) does not address the Commissioner's assignment responsibilities, and thus affords no basis for inferring any limitations on the Commissioner's authority to make assignments. Rather, Section 9704(f) deals with each assigned operator's proportionate share of *unassigned* beneficiary costs. The Commissioner's assignment authority is set forth in the separate

Section 9706(a), which, as we have explained, did not arbitrarily cut off, on October 1, 1993, the Commissioner's authority to ensure that responsibility for a Combined Fund beneficiary's health-care costs rests with the appropriate signatory operator. Even if Section 9704(f) might preclude an adjustment after October 1, 1993, to a signatory operator's unassigned-beneficiary premium based on adjustments in assignments, it would not follow that the Act barred the Commissioner from requiring that a signatory operator be responsible for a particular *assigned* beneficiary.

In any event, Section 9704(f) does not bar adjustments to unassigned beneficiary premiums after October 1, 1993, based on assignments made after that date. Section 9704(f)(1) provides:

> The term "applicable percentage" means, with respect to any assigned operator, the percentage determined by dividing the number of eligible beneficiaries assigned under section 9706 to such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993).

Section 9704(f)(1) defines each assigned operator's "applicable percentage" of the total number of assigned beneficiaries, and essentially requires each assigned operator to pay the proportion of the total health-care costs for all unassigned beneficiaries that is equal to its proportion of assigned beneficiaries. The Sixth Circuit reasoned in *Dixie Fuel* that, because Section 9704(f)(1) requires the "applicable percentage" to be determined on the basis of assignments "as of October 1, 1993," Congress must have required all assignments to be completed by that date.

The language of Section 9704(f)(1), however, admits of a different reading that is much more consistent with the statute as a whole. As the Sixth Circuit acknowledged (*Dixie Fuel*, 171 F.3d at 1062 (Pet. App. 46a)), Congress expressly *required* adjustments to be made to the "applicable percentage" in at least two defined circumstances—to reflect changes made to assignments based on the administrative appeal process (see 26 U.S.C. 9704(f)(2)(A)), and to take account of assigned operators that go out of business after October 1, 1993 (see 26 U.S.C. 9704(f)(2)(B)). The fact that Congress required such adjustments to be made in at least two circumstances does not suggest, however, that Congress *prohibited* adjustments in all other circumstances. Section 9704(f)(2) provides that the "applicable percentage for any assigned operator *shall* be redetermined" in those two cases. 26 U.S.C. 9704(f)(2) (emphasis added); see 26 U.S.C. 9704(f)(2)(A) (assignments "shall be modified" to reflect appeals); 26 U.S.C. 9704(f)(2)(B) (total number of assigned beneficiaries "shall be reduced" when operators go out of business). The Act does not, however, provide that adjustments "shall not" be made in any other circumstances. For example, although the Act does not expressly provide that such adjustments shall be made to reflect reassignments made if initial assignments are invalidated on judicial review, there is no evident reason why the Act should prohibit such adjustments.

In addition, when the Commissioner has reassigned beneficiaries from one operator to another based on an administrative or judicial determination that the initial assignment was in error, and each assigned operator's "applicable percentage" is changed as a result, the question has arisen whether Congress intended such changes to each assigned operator's "applicable per-

centage" to operate prospectively only, or whether such changes should relate back to the inception of premium-based financing of the Combined Fund on October 1, 1993. The Combined Fund has read Section 9704(f) to provide that such recalculations of each assigned operator's "applicable percentage" should relate back to October 1, 1993, when the proper assignment should have been made in the first place. In such cases, the adjustment will be deemed to have taken effect "as of" October 1, 1993, for the purpose of computing an operator's "applicable percentage" for a plan year.[17]

Nothing in the statutory scheme suggests that such adjustments in the assigned and unassigned beneficiary pools are unworkable or contrary to the overall statutory design. If beneficiaries must be reassigned from one operator to another, the Combined Fund can bill the new assignee and provide a refund or credit to the prior assignee. If beneficiaries are shifted between the assigned and unassigned beneficiary pools because of errors in the initial assignment determination, the Combined Fund can recalculate the unassigned-beneficiary obligations for any particular plan year and

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[17] For example, when many of the Commissioner's initial assignments were vacated in light of this Court's decision in *Eastern Enterprises*, and numerous previously assigned beneficiaries were deemed unassigned as a result of that decision, the Combined Fund recalculated each assigned operator's "applicable percentage" of the total number of assigned beneficiaries, redetermined each assigned operator's unassigned-beneficiary premium based on that recalculation, and adjusted each operator's premiums back to October 1, 1993, as a result of that redetermination. The Commissioner has filed an amicus curiae brief expressing agreement with the Combined Fund's reading of Section 9704(f). See *Apogee Coal Co.* v. *Holland*, No. 98-C-2858-S (N.D. Ala. June 1, 2001), appeal pending, No. 01-13691 (11th Cir.) (argued Mar. 8, 2002).

make appropriate arrangements for refunds, credits, or requests for additional payments. Cf. 30 U.S.C. 1232(h)(4) (noting that AML transfers used to finance unassigned retiree benefits shall be adjusted in light of prior underpayment or overpayment). Indeed, the statute *requires* that adjustments be made in premium obligations if beneficiary assignments must be changed as a result of an appeal of an initial assignment determination or an assigned operator's cessation of business. See 26 U.S.C. 9704(f)(2), 9706(f)(3). Thus, the practicalities of administering the statute do not require that the number of assigned and unassigned beneficiaries be fixed in concrete as of October 1, 1993.[18]

Moreover, the October 1, 1993, date, serves another function: it marks the termination of the interim period in which the Combined Fund was financed through contributions from signatories to the 1988 NBCWA, and the commencement of the period in which the Fund is financed through premiums contributed by signatory operators that are assigned beneficiaries by the Commissioner. See 26 U.S.C. 9704(i)(1)(A); p. 8, note 5, *supra*. Such a date was necessary to ensure that a definite end was placed to payments by 1988 signatories that had no individual retirees in the Combined Fund

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[18] The Act, moreover, expressly anticipates that the number of unassigned beneficiaries will change over time (and therefore an assigned operator's unassigned-beneficiary premium will change from year to year). Under Section 9704(d), an operator's unassigned-beneficiary premium is the applicable percentage of the product of the per-beneficiary premium for the plan year multiplied by "the number of eligible beneficiaries who are not assigned under section 9706 to any person *for such plan year*." 26 U.S.C. 9704(d) (emphasis added). Thus, annual changes in the amount that an assigned operator will owe to the Combined Fund are built into the statute itself.

beneficiary pool and thus had no long-term obligations against which those interim contributions could be credited (see 26 U.S.C. 9704(i)(1)(D)(i)). The October 1, 1993, date did not, however, terminate the authority of the Commissioner to assign beneficiaries of the Combined Fund to the signatory operator that had actually employed them.

C. Congress's Subsequent Enactment Of An Appropriations Law To Allow The Commissioner To Perform Her Responsibilities Under The Coal Act Shows That The Commissioner's Assignment Authority Did Not Terminate On October 1, 1993

Subsequent legislation appropriating funds to SSA to carry out the assignment process under the Coal Act demonstrates that Congress fully anticipated that the assignment process might well continue after October 1, 1993. A supplemental appropriation for SSA to undertake its responsibilities under the Coal Act was necessary because Congress had not made any such appropriation when it enacted the Coal Act, and SSA concluded that it could not use Social Security trust funds to carry out Coal Act responsibilities. SSA determined that the assignment process (as well as the process of determining the per-beneficiary premium, and undertaking any administrative reviews of appeals from the initial assignments) could not even begin until Congress enacted a supplemental appropriation. See pp. 8-9, *supra*. At a subcommittee hearing held on February 17, 1993, the Acting Commissioner explained the need for the supplemental appropriation. He stated further in a written submission to the subcommittee that "we have already passed the date to resolve all of these cases by October 1, 1993," and that, in light of the complexity of the assignment determinations and the

delay in receiving necessary funding, it was "unlikely that the assignment of all 85,000 coal miners can be completed by October 1, because some of these cases will require significant research to resolve."[19]

Congress therefore enacted a supplemental appropriation to allow SSA "to carry out sections 9704 and 9706" of title 26, which includes the initial-assignment responsibility set forth at Section 9706(a). See Supplemental Appropriations Act of 1993, Pub. L. No. 103-50, Ch. V, 107 Stat. 254. Congress did not pass the supplemental appropriations act until July 2, 1993, less than three months before the supposed jurisdictional deadline of October 1, 1993. See p. 9, *supra*. Yet Congress knew, when it enacted that appropriations act, that the initial assignment process had not even begun, and that the agency had told Congress that it could not finish the process of assigning the retired miners by October 1, 1993.[20] Congress accordingly made clear that it

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[19] *House Appropriation Hearings* Pt. 2, at 125-126, 158-159 (statement and submission of Acting Commissioner Louis D. Enoff).

[20] Respondents have noted that, at a hearing held on September 9, 1993, after the supplemental appropriations measure was enacted, a different Acting Commissioner told a different committee that SSA expected to complete the initial assignment process before October 1, 1993. See Bellaire Br. in Opp. 12-13; *1993 House Coal Act Hearing* 26 (statement of Acting Commissioner Lawrence H. Thompson). Acting Commissioner Thompson may have been optimistic at that point about SSA's ability to complete the assignment process by the statutory date, but he was not making an enforceable commitment that the supposed deadline would be met for all initial assignments, and Congress had already enacted the supplemental appropriations measure after having been told by SSA that it could not complete all assignments by October 1, 1993, even if the agency began the process immediately. See p. 36, *supra*. Respondents also observe (Bellaire Br. in Opp.

intended the supplemental funds to be available to the agency to make assignments *after* October 1, 1993. Congress expressly provided that the supplemental appropriation would *not* expire at the end of the then-current fiscal year, which coincided with the Coal Act assignment "deadline," but would instead remain available "until expended."[21]

Congress's decision to make the supplemental funds available "until expended" is particularly significant. A supplemental appropriation is ordinarily subject to the purpose and time limitations, along with any other applicable restrictions of the appropriation being supplemented. See 2 General Accounting Office, *Principles of Federal Appropriations Law* 6-100 (2d ed. 1992). The unobligated balance of a supplemental appropriation therefore ordinarily expires at the end of the fiscal year in which it is passed, just as the unobligated balance of a regular annual appropriation measure expires at the end of the fiscal year for which it is enacted. *Ibid.* But when Congress provides that

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13) that Mr. Thompson told a House subcommittee two years later that the agency had completed the process of making initial assignment decisions by October 1, 1993. But that comment was not made in the context of addressing whether the agency had power to make assignments after that date, and indeed Mr. Thompson also explained that SSA had had great difficulty in developing a list of assignable coal operators, and that "we continue to update the lists throughout the assignment process and the review process as we learn more about the companies." *1995 House Hearing* 23.

[21] See 107 Stat. 254. The fiscal year of the United States government begins on October 1 of each year and ends on September 30 of the following year. See 31 U.S.C. 1102. The 1993 federal fiscal year thus ended on September 30, 1993, the same date as the putatively absolute jurisdictional deadline on the Commissioner's assignment power under the Coal Act.

an appropriation shall remain available "until expended," the effect is that "all statutory time limits as to when the funds may be obligated and expended are removed." 1 General Accounting Office, *Principles of Federal Appropriations Law* 5-6 (2d ed. 1992).

In providing that the supplemental appropriations to carry out the Commissioner's tasks under the Coal Act would remain available "until expended," Congress expressed its understanding that the Commissioner could conduct those tasks, if necessary, beyond the then-current fiscal year, which ended on September 30, 1993. Congress would not have made that appropriation available beyond September 30, 1993, if it had believed that the Coal Act imposed an independent jurisdictional limitation on the Commissioner's power to make assignments after that date. Cf. *TVA* v. *Hill*, 437 U.S. 153, 190 (1978) ("When voting on appropriations measures, legislators are entitled to operate under the assumption that the funds will be devoted to purposes which are lawful and not for any purpose forbidden.").[22]

D. The Commissioner's Construction Of Her Authority To Make Assignments On Or After October 1, 1993, Is Entitled To Deference

Finally, to the extent the Coal Act may be ambiguous on the question, the Commissioner's construction of the Act as providing her with authority to continue, if necessary, the assignment process after October 1,

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[22] The supplemental appropriations act also provided authorization for the agency to undertake other specific tasks under the Coal Act, such as conducting administrative reviews of appeals from initial assignment decisions. See p. 9, *supra*. The supplemental measure did not, however, suggest that the agency's authority to expend funds for Coal Act functions after October 1, 1993, was limited to any one of the specified duties.

1993, is entitled to deference. Cf. *National Cable & Telecomm. Ass'n* v. *Gulf Power Co.* 122 S. Ct. 782, 790 (2002). The Commissioner's conclusion that she retains assignment powers after October 1, 1993, is certainly not contradicted by anything in the statutory text; it furthers the Coal Act's objectives; and it is consistent with background principles set forth in decisions of this Court.

The Commissioner's application of the Coal Act also reflects the agency's practical experience in carrying out the enormously complex assignment tasks that the Act requires. That application was undertaken, moreover, in the context of exercising the power Congress conferred on the Commissioner to make binding assignment determinations that, unless set aside on judicial review, have the force and effect of law. See *Barnhart* v. *Walton*, No. 00-1937 (Mar. 27, 2002), slip op. 9-10; *United States* v. *Mead Corp.*, 121 S. Ct. 2164, 2171-2174 (2001); *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984). For all those reasons, the Court, if it finds the Act ambiguous, should defer to the Commissioner's interpretation and sustain her determination that she had authority under the Coal Act to make assignments of beneficiaries after October 1, 1993.

CONCLUSION

The judgments of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

1. Section 9704 of Title 26, United States Code, provides in pertinent part:

§ 9704. Liability of assigned operators

(a) Annual premiums

Each assigned operator shall pay to the Combined Fund for each plan year beginning on or after February 1, 1993, an annual premium equal to the sum of the following three premiums—

(1) the health benefit premium determined under subsection (b) for such plan year, plus

(2) the death benefit premium determined under subsection (c) for such plan year, plus

(3) the unassigned beneficiaries premium determined under subsection (d) for such plan year.

Any related person with respect to an assigned operator shall be jointly and severally liable for any premium required to be paid by such operator.

(b) Health benefit premium

For purposes of this chapter—

(1) In general

The health benefit premium for any plan year for any assigned operator shall be an amount equal to the product of the per beneficiary premium for the plan year multiplied by the number of eligible bene-

ficiaries assigned to such operator under section 9706.

(2) Per beneficiary premium

The Commissioner of Social Security shall calculate a per beneficiary premium for each plan year beginning on or after February 1, 1993 * * *.

* * * * *

(d) Unassigned beneficiaries premium

The unassigned beneficiaries premium for any plan year for any assigned operator shall be equal to the applicable percentage of the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries who are not assigned under section 9706 to any person for such plan year.

* * * * *

(f) Applicable percentage

For purposes of this section—

(1) In general

The term "applicable percentage" means, with respect to any assigned operator, the percentage determined by dividing the number of eligible beneficiaries assigned under section 9706 to such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993).

(2) Annual adjustments

In the case of any plan year beginning on or after October 1, 1994, the applicable percentage for any assigned operator shall be redetermined under paragraph (1) by making the following changes to the assignments as of October 1, 1993:

(A) Such assignments shall be modified to reflect any changes during the period beginning October 1, 1993, and ending on the last day of the preceding plan year pursuant to the appeals process under section 9706(f).

(B) The total number of assigned eligible beneficiaries shall be reduced by the eligible beneficiaries of assigned operators which (and all related persons with respect to which) had ceased business (within the meaning of section 9701(c)(6)) during the period described in subparagraph (A).

2. Section 9706 of Title 26, United States Code, provides, in pertinent part:

§ 9706. Assignment of eligible beneficiaries

(a) In general

For purposes of this chapter, the Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:

(1) First, to the signatory operator which—

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which—

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement.

* * * * *

(f) Reconsideration by Commissioner

(1) In general

Any assigned operator receiving a notice under subsection (e)(2) with respect to an eligible beneficiary may, within 30 days of receipt of such notice, request from the Commissioner of Social Security detailed information as to the work history of the beneficiary and the basis of the assignment.

(2) Review

An assigned operator may, within 30 days of receipt of the information under paragraph (1), request review of the assignment. The Commissioner of Social Security shall conduct such review if the Commissioner finds the operator provided evidence with the request constituting a prima facie case of error.

(3) Results of review

(A) Error

If the Commissioner of Social Security determines under a review under paragraph (2) that an assignment was in error—

(i) the Commissioner shall notify the assigned operator and the trustees of the Combined Fund and the trustees shall reduce the premiums of the operator under section 9704 by (or if there are no such premiums, repay) all premiums paid under section 9704 with respect to the eligible beneficiary, and

(ii) the Commissioner shall review the beneficiary's record for reassignment under subsection (a).

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